
(2022) 11 TEL CK 0021
In the Telangana High Court
Case No : Writ Petition No. 173 Of 2022

Eshwar Singh

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 09-11-2022

Acts Referred:

Citation : (2022) 11 TEL CK 0021

Hon'ble Judges : P.Madhavi Devi, J

Bench : Single Bench

Advocate : J Venkatram Narsimha Reddy

Final Decision : Allowed

Judgement

1.This Writ Petition has been filed by the petitioners seeking a 'Writ of Mandamus' to declare the rejection order dated 03.09.2021 passed by respondent No.2 rejecting the request of the petitioners for regularization of their services on par with similarly placed Class-IV employees, as illegal and arbitrary.

2. It is the case of the petitioners that the services of similarly placed persons such as the petitioners herein were regularized vide R.C.No.6/2/DW/92/03 dated 30.08.2003 pursuant to G.O.Ms.No.212 dated 22.04.1994, Finance and Planning (FW.PC.III) Department, and also in accordance with the direction of the Apex Court in the case of Secretary, State of Karnataka and others vs. Umadevi 2006 (4) SCC Page 1 and hence their cases also should be considered for regularization.

3. The brief facts, leading to the filing of the present writ petition are that the petitioners claim to be working as daily wage employees of respondent No.2- Nizam's Institute of Medical Sciences (for short 'NIMS'), Hyderabad, uninterruptedly from December, 1990. It is averred that the petitioners have been working through a Contractor but with respondent No.2-NIMS as the principal employer.

4. It is submitted that when the services of the petitioners were not regularized, they had approached this Court in W.P.No.19225 of 2020 and this Court had disposed of the said writ petition directing the petitioners therein to submit a representation afresh within a period of two weeks from the date of receipt of a copy of the said order and on receipt of such a representation, the respondents were directed to consider the same in terms of the Judgment of the Apex Court in Umadevi's case (supra) and to pass appropriate orders thereon in accordance with law, within a period of eight weeks thereafter.

5. It is averred that the petitioners have made representations accordingly, and by impugned orders the respondents have rejected the cases of the petitioners on the ground that the petitioners were not engaged by them and they are working with a contractor.

6. Learned counsel for the petitioners submitted that though the petitioners were employed through the Contractor, respondent No.2 was the principal employer and the Employee Provident Fund Authorities have recognized respondent No.2 as the principal employer. He has referred to Page 7 of the affidavit dated 12.05.1995 to prove the above contention. He further submitted that in the earlier writ proceedings, respondents had consented to dispose of the representations of the petitioners after accepting that the petitioners were working with the respondent No.2-institution and the word 'shall' used in the order only means that positive order of regularization ought to have been passed in terms of the Judgment of the Hon'ble Supreme Court in Uma Devi's case (supra). He relied upon of the Judgment of the Hon'ble Supreme Court in Uma Devi's case, wherein at Para 53, it is contended that even contract labourers and daily wage employees are entitled for regularization in terms of G.O.Ms.No.212 dated 22.04.1994. He further submitted that the petitioners are in continuous service of 30 long years and therefore, the posts in which they are working are to be deemed as sanctioned posts and the petitioners should be regularized against such regular vacancies from the date of their eligibility.

7. Learned Standing Counsel for respondents No.2 and 3 however, relied upon the contentions raised in the counter affidavit that the petitioners were never engaged by the respondent-institution and that the petitioners are only employed through a Contractor and contract labourers are not eligible for regularization in terms of G.O.Ms.No.212 dated 22.04.1994 and also in terms of the Judgment of the Hon'ble Supreme Court in Uma Devi's case.

8. Learned Government Pleader for respondent Nos.1 and 4 placed reliance upon the Judgment of the Hon'ble Supreme Court in the case of Harminder Kaur vs. Union of India (2009) 13 SCC 90 for the proposition that mere long service rendered by adhoc employees cannot be a ground for regularization and regularization cannot be a mode of appointment. She also referred to the Judgment of the Hon'ble Supreme Court in the case of Indian Drugs & Pharmaceuticals Limited 2006 (10) SC 216, wherein the Hon'ble Supreme Court deprecated the practice of regularization of adhoc employees as 'back door entry'

or 'litigious employment'. She therefore, prayed for dismissal of the writ petition.

9. Having regard to the rival contentions and the material on record, this Court finds that admittedly, the petitioners have been working with the respondent organization for nearly 30 years. On the earlier occasions, when the petitioners have approached this Court, this Court was pleased to direct the respondents to consider the case of the petitioners for regularization of their services in terms of the judgment of Hon'ble Supreme Court in the case of Uma Devi (cited supra). In the case of Uma Devi, the Hon'ble Supreme Court has directed the Union Government, State Governments and their instrumentalities to take steps to regularize, as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under the cover of orders of courts or of tribunals and to further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that are required to be filled up in cases where temporary employees or daily wagers are now being employed and that the process must be set in motion within six months from the date of the order.

10. The Hon'ble Supreme Court has referred to the regularization of temporary, contractual, casual, daily wager or adhoc employees appointed/recruited to constitute a scheme of public employment on issuance of directions of Court so far. Therefore, the said judgment would be applicable even to the contractual employees, if they worked for more than the required period.

11. The Single Bench of this Court in I.A.No.1 of 2019 in W.P.No.47675 of 2018, had considered this issue at length and after considering the judgment of the Hon'ble Supreme Court in the case of Uma Devi and the subsequent judgments on the issue has held that the introduction of interdictory agency/contractor between the organization and the outsourcing employees like the petitioners therein is only a device adopted by the GHMC to exploit the petitioners by denying them the benefits available to regular employees such as scales of pay, leave, medical benefits, promotions, increments and other services benefits and the GHMC cannot be allowed to perpetuate this violation of law and therefore, it is not permissible to respondents therein to take shelter under Act 2 of 1992 to deny regularization to the petitioners, who have admittedly satisfied the criteria laid down in Para 53 of the Judgment in Umadevi (cited supra).

12. Learned counsel for the petitioners submits that this judgment has not been challenged by the respondents therein and therefore, it has become final. Even from the averments made in the counter affidavit, it is noticed that the respondents have not made any regular appointments to the posts in which the petitioners have been working on contract basis from the year 1990 onwards. Therefore, it is clear that they have adopted the method of outsourcing only to deny the petitioners the benefits of regularization.

13. In view of the same, the impugned order rejecting the requests of the petitioners is clearly not sustainable. The respondents are therefore, directed to

reconsider the case of the petitioners for regularization and pass orders of regularization of their services with effect from the date of their eligibility with all consequential benefits.

14. Accordingly, this writ petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.